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CITY AND COUNTY OF SAN FRANCISCO

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

METRO FUEL LLC, a Delaware limited  
liability company,

Plaintiff,

vs.

CITY OF SAN FRANCISCO, a municipal  
corporation, COUNTY OF SAN  
FRANCISCO, a subdivision of the State  
of California, CITY AND COUNTY OF  
SAN FRANCISCO, a chartered California  
city and county and DOE 1 through DOE  
10,

Defendants.

Case No. C07-6067 JSW

**DECLARATION OF KIMBERLY J.  
DURANDET IN OPPOSITION TO  
PLAINTIFF'S MOTION FOR A  
PRELIMINARY INJUNCTION**

Hearing Date: November 14, 2008  
Time: 9:00 a.m.  
Place: Courtroom 2, 17<sup>th</sup>  
Floor

Trial Date: October 26, 2009

1 I, KIMBERLY J. DURANDET, declare:

2 1. I have personal knowledge of the matters stated herein, except for those matters set  
3 forth on information and belief, which I believe to be true, and if called to testify, I can and will  
4 testify competently as to all matters set forth herein.

5 2. I am employed as a Planner for the San Francisco Planning Department. I have been  
6 employed in this capacity for 2 3/4 years. Prior to my employment as a Planner for the Planning  
7 Department, I was a graduate student intern for the United States Department of the Interior.

8 3. As a Planner for the Planning Department, I am responsible for assisting in the  
9 planning, development and implementation of the general advertising sign inventory program,  
10 including but not limited to managing and assisting the student trainees in the City-wide survey of  
11 general advertising signs. Working with Jonathan Purvis and other Planning Department staff, I  
12 helped develop the process by which a City-wide survey of general advertising signs was to be  
13 conducted.

14 4. I was primarily responsible for managing the field study, including supervising the  
15 field workers and adjusting their assignments as needed based on the survey program's goals. The  
16 steps I took to supervise the field workers included meeting with them individually and as a group  
17 every week to assign survey areas to be covered based on what was determined to be a priority of  
18 resource allocation. In addition to the field survey, I assigned them individual office projects related  
19 to the field work such as creating a file for each sign found in the field. On occasion I would join  
20 field workers to survey a given area.

21 5. In order to conduct the survey, Planning Department staff (working with consultants)  
22 created a City Inventory database by merging all of the sign inventories submitted to the City by  
23 general advertising sign companies into a single database and by merging that database with  
24 databases containing sign-related information maintained by the Planning Department. This City  
25 Inventory was mapped by a Geographic Information Systems ("GIS") application. Using that map, I  
26 determined where the greatest concentration of signs was and created a survey area plan and calendar,  
27 assigning certain parcels to each field surveyor. Although the original survey design did not call for  
28

1 residential blocks to be surveyed, I felt strongly that for a city-wide survey to be comprehensive it  
2 needed to include every block including residential areas. Therefore, I instructed field workers to  
3 survey by car all residential areas adjacent to targeted districts. The result was a City-wide survey  
4 that included all parcels, whether or not those parcels were identified by general advertising sign  
5 companies as containing signs.

6 6. I also personally conducted field work on occasion by surveying parcels. In the course  
7 of surveying each parcel, I checked the parcel to see whether any general advertising signs (where  
8 each separate sign face was counted as an individual sign) were located on the parcel. If I found a  
9 sign on the parcel, I tried to match the sign or signs I found against any signs identified for that parcel  
10 in the current version of the City Inventory, contained on a laptop that I took into the field. If I could  
11 not match a sign on the ground with a sign listed in the City Inventory, I observed and recorded in the  
12 City Inventory database comprehensive information about each sign I found, including sign type (i.e.  
13 whether the sign is freestanding, attached to a wall, or attached to a roof), size, height, orientation,  
14 features such as illumination, permit number if displayed on the sign, company name if displayed on  
15 the sign, the condition of the sign (including any graffiti or maintenance concerns), and the block and  
16 lot where the sign was located. I also noted whether the sign displayed its dimensions as required by  
17 Planning Code section 604.1.

18 7. If the sign or signs that I found on each parcel I surveyed was listed in the City  
19 Inventory, I nonetheless independently verified comprehensive information concerning that sign,  
20 including sign type (whether freestanding, wall, or roof), size, height, orientation, features such as  
21 illumination, permit number if displayed on the sign, company name if displayed on the sign,  
22 condition of the sign (including any graffiti or maintenance concerns), and the block and lot where  
23 the sign was located. I also noted whether the sign displayed its dimensions as required by Planning  
24 Code section 604.1. If any of the information submitted by a company in the City Inventory was  
25 incorrect, then I made a note in the City Inventory database of the discrepancy so that it could be  
26 researched and resolved at a later stage in the survey process. If the information already contained in  
27 the City Inventory proved to be correct based on my independent field observations, then I did not  
28 modify the database entries for that sign.

1           8.       To verify sign type, size, height, orientation, illumination, condition, block and lot, and  
2 whether the sign disclosed its company name, size, and permit number as required by Planning Code  
3 section 604.1, of any sign already listed in the City Inventory, took, on average, an amount of time  
4 equal to the time required to determine this information with regard to a sign not listed in the City  
5 Inventory. Where the data already contained in the City Inventory concerning a sign proved to be  
6 accurate, however, it saved me the time of entering that data.

7           9.       For each parcel that I surveyed, I took one to four photographs of each sign face that I  
8 found on the parcel. The photographs I took of the sign faces were intended to demonstrate the scale  
9 and structural defects, if any, of each sign, as well as the information required to be displayed on the  
10 sign pursuant to Planning Code section 604.1. While still in the field or upon my return to the office,  
11 I uploaded these photographs into the City Inventory database using a GIS application that was  
12 installed on my laptop. In order to pinpoint the location of each sign that I surveyed and  
13 photographed while in the field, I also marked each sign that I found on an electronic map of the City  
14 with a dot using the GIS application. Each dot was assigned a unique identifying number generated  
15 by the computer application I was using. The photographs that I took are linked electronically to the  
16 dot for each sign. For every sign that I surveyed, the dot on the map was placed by me or one of my  
17 Planning Department colleagues and the linked photographs were taken by me or one of my Planning  
18 Department colleagues. None of the dots or the photographs for the signs that I surveyed was  
19 generated by any general advertising sign company.

20           10.      In addition to assisting in the development, supervision, and implementation of the  
21 City-wide survey and the creation of the City Inventory of general advertising signs, I also supervised  
22 the creation of a map of the City that shows the location of every general advertising sign listed in the  
23 City Inventory. This map was created exclusively using the City Inventory, and in particular using  
24 the location dots that were entered into the GIS application by Planning Department staff.

25           11.      Upon completion of the survey my duties shifted to sign research, review, analysis,  
26 and enforcement.

27           12.      I understand that Charles T. Fetterman submitted a declaration in support of Metro  
28 Fuel's motion for a preliminary injunction. In his declaration, Mr. Fetterman stated that he is the

1 owner of the property located at 360 5<sup>th</sup> Street, San Francisco, CA. The violation located at this  
2 address is in the Residential/Service Mixed Use Zoning District governed by Section 815 of the  
3 Planning Code. (Added by Ord. 115-90, App. 4/6/90) General advertising signs are prohibited in this  
4 zoning district per Section 815.76. Furthermore, Section 607.2(e) expressly prohibits new general  
5 advertising signs in South of Market Mixed Use Districts with the exception of the South of Market  
6 (SOMA) Special Sign District (SSD). This property is not located in the SOMA SSD therefore,  
7 would not be permitted under 607.2(e).

8 13. I understand that Devendra Patel submitted a declaration in support of Metro Fuel's  
9 motion for a preliminary injunction. In his declaration, Mr. Patel stated that he is the owner of the  
10 property located at 102 Sixth Street, San Francisco, CA. The violation located at this address is in the  
11 Residential/Service Mixed Use Zoning District governed by Section 815 of the Planning Code.  
12 (Added by Ord. 115-90, App. 4/6/90) General advertising signs are prohibited in this zoning district  
13 per Section 815.76. Furthermore, Section 607.2(e) expressly prohibits new general advertising signs  
14 in South of Market Mixed Use Districts with the exception of the South of Market (SOMA) Special  
15 Sign District (SSD). This property is not located in the SOMA SSD therefore, would not be  
16 permitted under 607.2(e).

17 14. I understand that Nazir Javaid submitted a declaration in support of Metro Fuel's  
18 motion for a preliminary injunction. In his declaration, Mr. Javaid stated that he is the owner of the  
19 Naz Auto Services, Inc., the entity that owns the property located at 376 Castro Street. The violation  
20 located at this address is in the Upper Market Street Neighborhood Commercial District governed by  
21 Section 721 of the Planning Code. (Added by Ord. 69-87, App.3/13/87) General advertising signs are  
22 prohibited in this zoning district per Section 721.30. Furthermore, it is located within the boundaries  
23 of the Upper Market Special Sign District (SSD) where general advertising signs are prohibited per  
24 Planning Code Section 608.10(b).

25 15. I understand that Stephanie Foneseca submitted a declaration in support of Metro  
26 Fuel's motion for a preliminary injunction. In her declaration, Ms. Foneseca stated that she is the  
27 tenant of the Janice Pivnick Trust, the property owner of 1398 California Street. This violation is  
28 located in the Polk Street Neighborhood Commercial District governed by Section 723 of the

1 Planning Code. (Added by Ord. 69-87, App. 3/13/87) General advertising signs are prohibited in this  
2 zoning district per Section 723.30.

3 16. I understand that Anton Halteh submitted a declaration in support of Metro Fuel's  
4 motion for a preliminary injunction. In his declaration, Mr. Halteh stated that he is the Trustee of the  
5 Anton & Nimat Halteh Family Trust, the entity that owns a market located at 701 10<sup>th</sup> Avenue, San  
6 Francisco, CA. This violation is located in a Neighborhood Commercial Cluster District governed by  
7 Section 710 of the Planning Code. (Added by Ord. 69-87, App. 3/13/87) General advertising signs  
8 are prohibited in this zoning district per Section 710.30. Furthermore, Mr. Anton Halteh has filed an  
9 application for a building permit (2008.0814.9183) to remove this sign. Removing the sign will abate  
10 the violation.

11 17. I understand that Vijay Patel submitted a declaration in support of Metro Fuel's motion  
12 for a preliminary injunction. In his declaration, Mr. Patel stated that he is the owner of the property  
13 located at 1485 Bush Street, San Francisco, CA. This violation is in a unique location as it is located  
14 in a Residential-Commercial Combined (RC-4) District, which normally would not permit general  
15 advertising signs per Planning Code Section 606(a)(3). However, it is also within the boundaries of  
16 the Van Ness Special Sign District per Planning Code Section 607.3(c)(3). This section of the  
17 Planning Code permits general advertising signs under certain conditions which includes the  
18 following: "No more than one general advertising sign of 300 square feet or two general advertising  
19 signs of 72 square feet each shall be permitted per lot...All general advertising signs shall conform to  
20 the provisions of Section 5408 of the California Business and Professions Code, including the  
21 requirement that no advertising display shall be placed within 100 feet from another advertising  
22 display on the same side of Van Ness Avenue." This property has an existing general advertising  
23 sign located on the south wall. The signs referred to in this violation case would cumulatively exceed  
24 the square footage allowed per this Code Section. Additionally, another general advertising sign  
25 exists within one hundred feet on the same side of the street, which would prevent Planning  
26 Department approval of a permit at this location for a new general advertising sign.

27 18. I understand that Jennifer Lenh submitted a declaration in support of Metro Fuel's  
28 motion for a preliminary injunction. In her declaration, Ms. Lenh stated that she is the owner of the  
DECLARATION OF KIMBERLY J. DURANDET  
USDC No. C07-6067 JSW

1 Polk and Clay Liquor, the entity that rents the property located at 1700 Polk Street, San Francisco,  
2 CA. This violation is located in the Polk Street Neighborhood Commercial District governed by  
3 Section 723 of the Planning Code. (Added by Ord. 69-87, App. 3/13/87) General advertising signs  
4 are prohibited in this zoning district per Section 723.30.

5 19. I have reviewed the eight pictures of Metro Fuel signs submitted as exhibits to  
6 Michael A. Friedman's declaration.

7 20. The first picture is located in a Downtown General Commercial (C-3-G) Zoning  
8 District at 110 Franklin Street. While this zoning district would permit general advertising signs per  
9 Planning Code Section 227(k), it is located within 100 feet of a school, which has been prohibited  
10 since at least 1965.

11 21. The second picture is located in a Residential-Commercial Combined (RC-4) District  
12 overlayed by the North of Market Residential Special Use District at 168 Eddy Street. General  
13 advertising signs are prohibited in both levels of zoning districts per Sections 606(a)(3).

14 22. The third picture is located in the Upper Market Street Neighborhood Commercial  
15 District at 376 Castro. General advertising signs are prohibited in this zoning district per Section  
16 721.30. Furthermore, it is located within the boundaries of the Upper Market Special Sign District  
17 (SSD) where general advertising signs are prohibited per Planning Code Section 608.10(b).

18 23. The fourth picture is located in a Small Scale Neighborhood Commercial (NC-2)  
19 District at 3100 California Street. While this zoning district would permit general advertising signs  
20 per Planning Code Section 711.30, Section 607.1(e) would prohibit the sign from covering any  
21 windows. The sign as it exists would not be permitted.

22 24. The fifth picture is located in the Polk Street Neighborhood Commercial District at  
23 1343 Polk Street. General advertising signs are prohibited in this zoning district per Section 723.30.

24 25. The sixth picture is located in the Upper Market Street Neighborhood Commercial  
25 District at 1900 Market Street. General advertising signs are prohibited in this zoning district per  
26 Section 721.30. Furthermore, it is located within the boundaries of the Upper Market Special Sign  
27 District (SSD) where general advertising signs are prohibited per Planning Code Section 608.10(b).



1 Newly adopted zoning regulations for Market Octavia Plan Area NCT-3 do not affect prior general  
2 advertising sign controls.

3 26. The seventh picture is located in a Downtown General Commercial (C-3-G) Zoning  
4 District at 75 Howard Street. While this zoning district would permit general advertising signs per  
5 Planning Code Section 227(k), it is located within 200 feet of a freeway and further analysis would  
6 need to be conducted to determine potential compliance with Section 608.5 of the Planning Code  
7 regulations on freeway signs.

8 27. The eighth picture is located in a Downtown General Commercial (C-3-G) Zoning  
9 District at 3420 Taylor Street. While this zoning district would permit general advertising signs per  
10 Planning Code Section 227(k), it is located on a Category IV building in the Kearny-Market-Mason-  
11 Sutter Conservation District. General advertising signs are prohibited in any Historic or Conservation  
12 District or on any historic property per Planning Code Section 1111.7(a).

13  
14 I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and  
15 correct to the best of my knowledge.

16 Executed on August 28, 2008

17  
18 By: \_\_\_\_\_/s/\_\_\_\_\_  
19 KIMBERLY J. DURANDET



**SIGNATURE ATTESTATION**

(U.S.D.C. N.D. Cal. General Order 45, Section X.B.)

I obtained the concurrence in the filing of this document from the signatory of this declaration, in compliance with U.S.D.C. N.D. General Order 45, Section X.B.

Dated: August 29, 2008

DENNIS J. HERRERA  
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KRISTEN A. JENSEN  
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VICTORIA WONG  
Deputy City Attorneys

By:                     /S/                    .  
THOMAS S. LAKRITZ

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